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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,315	07/13/2005	Christian Quellet	102790-195 (30059 US)	2667
27389 7590 02/04/2010 PARFOMAK, ANDREW N. NORRIS MCLAUGHLIN & MARCUS PA 875 THIRD AVE, 8TH FLOOR NEW YORK, NY 10022				
EXAMINER GODENSCHWAGER, PETER T				
ART UNIT		PAPER NUMBER		
1796				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/542,315

**Applicant(s)**

QUELLET ET AL.

**Examiner**

PETER F. GODENSCHWAGER

**Art Unit**

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 7-13 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 7-13 and 17 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Applicant's reply filed October 5, 2009 has been fully considered. Claims 1, 7-13, and 17 are amended, and claims 1, 7-13, and 17 are pending.

#### ***Claim Objections***

Claim 9 is objected to because of the following informalities: Claim 9 recites the limitation "103 Pa". "103 Pa" appears to be a typo of " $10^3$  Pa" as supported by the previous versions of claim 9, and claim 9 does not indicate by way of markings that this limitation has been amended. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7-13, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by McManus et al. (Intl. Pub. No. WO 01/78657).

Regarding Claim 1: McManus et al. teaches a fragrance composition comprising a fragrance (Pg. 19, Ln 29), a liquid crystal forming material (Pg. 1, Lns. 9-10) containing a fatty alcohol having 22 carbon atoms (behenyl alcohol), and a thickening agent (reinforcing material)

(Pg. 12, Lns. 19-25, Pg. 15, Lns. 5-10). McManus et al. further teaches that the active ingredients (i.e. fragrance/perfume component) may form part of the ultimately formed liquid crystal/gel network (LCGN) and may be added to the composition before the LCGN is formed (Pg. 4, Lns. 25-27 and Pg. 20, Lns. 24-27). As such, a fragrance material that is part of a LCGN network and added/mixed with the LCGN material before forming the LCGN would necessarily be encapsulated by the LCGN (fully surrounded by the LCGN). McManus et al. further teaches the reinforcing (thickening) agent is calcium alginate (an alginate). While McManus et al. does not teach the alginate is admixed with amphiphilic modified starches or dextrans having a 1% solution viscosity lower than 50 mPas, such modified starches or dextrans are recited as optional.

The Examiner recognizes that all the claimed physical properties are not positively recited, namely that the reinforcing (thickening) material causes the encapsulated fragrance composition to exhibit a plateau region of the store elastic modulus higher than  $10^3$  Pascal at 25 °C. However, McManus et al. teaches all the claimed ingredients, process steps, and process conditions, therefore, the claimed physical properties would inherently be achieved by the composition as claimed. If it is the applicant's position that this would not be the case: (1) evidence would need to be presented to support applicant's position; and (2) it would be the Examiner's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients, process steps, and process conditions.

Regarding Claims 7 and 17: McManus et al. further teaches the liquid crystal-forming material comprising, in addition to a fatty alcohol having 22 carbon atoms (behenyl alcohol), a

non-ionic co-emulsifier (surfactant) such as ethoxylated fatty esters (ethoxylated fatty alcohols) of 10 to 22 carbon atoms (Pg. 10, Lns 10-13 and Pg. 12, Lns. 29-30).

Regarding Claim 8: McManus et al. further teaches that the composition is a emulsion (dispersion) where the liquid crystal material is in the form of particles (vesicles) (Pg. 3, Ln. 32-Pg. 4, Ln.4).

Regarding Claim 9: The Examiner recognizes that all the claimed physical properties are not positively recited, namely that the fragrance composition exhibits a plateau region of the store elastic modulus higher than  $10^3$  Pascal at 25 °C. However, McManus et al. teaches all the claimed ingredients, process steps, and process conditions, therefore, the claimed physical properties would inherently be achieved by the composition as claimed. If it is the applicant's position that this would not be the case: (1) evidence would need to be presented to support applicant's position; and (2) it would be the Examiner's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients, process steps, and process conditions.

Regarding Claim 10: The Examiner recognizes that all the claimed physical properties are not positively recited, namely that the composition has a liquid crystalline phase with a periodicity length of between 30 and 120 Angstroms. However, McManus et al. teaches all the claimed ingredients, process steps, and process conditions, therefore, the claimed physical properties would inherently be achieved by the composition as claimed. If it is the applicant's position that this would not be the case: (1) evidence would need to be presented to support applicant's position; and (2) it would be the Examiner's position that the application contains

inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients, process steps, and process conditions.

Regarding Claim 11: The Examiner recognizes that all the claimed physical properties are not positively recited, namely that the composition has at least one melting transition at a temperature higher than 50 °C. However, McManus et al. teaches all the claimed ingredients, process steps, and process conditions, therefore, the claimed physical properties would inherently be achieved by the composition as claimed. If it is the applicant's position that this would not be the case: (1) evidence would need to be presented to support applicant's position; and (2) it would be the Examiner's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients, process steps, and process conditions.

Regarding Claims 12 and 13: McManus et al. further teaches the composition as a skin moisturizing composition, (Pg. 1, Lns. 5-12) a personal care product commonly found in the house (household product).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 7-13, and 17 have been considered and sufficiently responded to in the new ground(s) of rejection above.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PETER F. GODENSCHWAGER whose telephone number is (571)270-3302. The examiner can normally be reached on Monday-Friday 7:30-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on (571) 272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Eashoo/  
Supervisory Patent Examiner, Art Unit 1796

/P. F. G./  
Examiner, Art Unit 1796